

Fiscal Note

State of Alaska
2019 Legislative Session

Bill Version:	SCS CSHB 49(FIN)
Fiscal Note Number:	31
(S) Publish Date:	5/13/2019

Identifier: HB049SCSCS(FIN)AM-LAW-CRIM-5-12-19
 Title: CRIMES; SENTENCING;MENT.
 ILLNESS;EVIDENCE
 Sponsor: RLS BY REQUEST OF THE GOVERNOR
 Requester: (S) Finance

Department: Department of Law
 Appropriation: Criminal Division
 Allocation: Criminal Justice Litigation
 OMB Component Number: 2202

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2020 Appropriation Requested	Included in Governor's FY2020 Request	Out-Year Cost Estimates				
			FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
OPERATING EXPENDITURES	FY 2020	FY 2020					
Personal Services	1,356.5		1,356.5	1,356.5	1,356.5	1,356.5	1,356.5
Travel	13.6		13.6	13.6	13.6	13.6	13.6
Services	211.9		211.9	211.9	211.9	211.9	211.9
Commodities	15.7		15.7	15.7	15.7	15.7	15.7
Capital Outlay	5.0		5.0	5.0	5.0	5.0	5.0
Grants & Benefits							
Miscellaneous							
Total Operating	1,602.7	0.0	1,602.7	1,602.7	1,602.7	1,602.7	1,602.7

Fund Source (Operating Only)

1004 Gen Fund (UGF)	1,602.7		1,602.7	1,602.7	1,602.7	1,602.7	1,602.7
Total	1,602.7	0.0	1,602.7	1,602.7	1,602.7	1,602.7	1,602.7

Positions

Full-time	14.0		14.0	14.0	14.0	14.0	14.0
Part-time							
Temporary							

Change in Revenues

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimated SUPPLEMENTAL (FY2019) cost: 0.0 (separate supplemental appropriation required)

Estimated CAPITAL (FY2020) cost: 0.0 (separate capital appropriation required)

Does the bill create or modify a new fund or account? No
 (Supplemental/Capital/New Fund - discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
 If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version/comments:

This fiscal note differs from the previous version due to the changes present in the Senate Finance committee's Committee Substitute, which includes new reporting requirements for the Criminal Division.

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Phone: (907)465-3674
 Date: 05/12/2019
 Date: 05/12/19

**REPORTED OUT OF
SFC 05/13/2019**

FISCAL NOTE ANALYSIS

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Analysis

This bill makes a number of changes to the state's criminal code, as well as to the statutes affecting pretrial, probation, and parole.

Classification and Sentencing

This bill makes a number of changes to the state's sex offense statutes. The changes increase the classification of certain crimes and increase the sentences for certain conduct:

Sexual abuse of a minor in the third degree, which is currently sentenced as a regular class C felony (0-2 years, 5 years max), will be sentenced as a sexual felony with a presumptive sentencing range of 2-12 years (99 max) when there is a six-year age difference between the perpetrator and victim; indecent viewing or photography of a minor will be a registerable sex offense and punishable as a sexual felony; soliciting a minor to commit sexual acts will also be a sexual felony punishable by a presumptive range of 5-15 years (99 max); and the defense of marriage will no longer be allowed for all sexual assault crimes *except* those where there is consent and the conduct is illegal due to the nature of the relationship (probationer/probation officer, peace officer/person in custody; Division of Juvenile Justice officer/person 18 or 19 and under the jurisdiction of the Division of Juvenile Justice).

In addition, class A misdemeanor sentences are returned to 0-365 days. Class B misdemeanor sentences are increased from 0-10 days to 0-90 days. Additionally, class A and B felony sentencing ranges are increased by approximately 2 years to their pre-SB 91 levels. Probation lengths are also returned to their 2015 ranges. The maximum period of probation for a felony sex offense will be 25 years and for all other offenses the maximum period will be 10 years.

All drug trafficking offenses are reenacted to be consistent to what they were in 2015. This includes reenacting an A felony level offense for the distribution of heroin and repealing the amount based system in current law. Further, the enhanced sentences for manufacturing methamphetamine around children is reenacted. The bill also makes drug possession offenses a class C felony.

Further, this bill enacts several new criminal offenses. First, it enacts a generalized threat statute. This statute will criminalize making a threat which places a person in fear of serious physical injury with reckless disregard that the threat may cause the evacuation of a building, or a serious public inconvenience. The bill also makes driving with a license that is canceled, suspended, or revoked a class A misdemeanor in all cases. Finally, the bill enacts the crime of removal of an electronic monitoring device when the person is sentenced for a misdemeanor or while under pretrial detention.

The bill also allows a prosecutor to use a person's criminal history report (APSIN) at the grand jury phase of a case to prove the existence of prior convictions when prior convictions are an element of the offense charged (i.e. felon in possession, felony assault due to prior assault convictions).

The creation of new criminal offenses will likely require the Criminal Division to engage in additional litigation. However, the ability to use a criminal history report at grand jury should provide a cost efficiency as it often takes days to weeks to obtain a certified judgment. The reprioritization of drug offenses as felonies will likely increase law enforcement referrals. It is anticipated that felony drug prosecutions will return to their pre-2016 levels – between 2015 and 2017, felony drug prosecutions dropped approximately 70% (or approximately 740 cases). It is anticipated that prioritizing felony drugs offenses for prosecution, combined with the significant increase in drug prevalence in Alaska (*see generally* Department of Public Safety 2017 drug report showing a significant increase in heroin and methamphetamine seizures in the state), will cause felony drug prosecutions to return, or exceed, their pre-2016 levels.

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Increased sentences and penalties will likely increase the number of trials, contested sentencing hearings, and appeals. The department anticipates an increase in the litigation at all stages of the criminal process. It is anticipated that additional prosecutor positions and associated support staff spread throughout the state would be needed to handle the increased litigation. Finally, in 2016, the department anticipated an increase in litigation with the passage of criminal justice reform. The department has monitored that litigation and is aware of the areas in which it occurred. This increase in litigation is likely to continue for a number of years regardless of the passage of this legislation. The department anticipates that the passage of this legislation will result in a similar increase in litigation, which cannot be handled with current staffing levels. Assuming the department sees an increase in litigation similar to what it saw with the passage of criminal justice reform, combined with the increased litigation from increased sentences and penalties, it is anticipated that the department will be able to handle the increased workload if additional attorney and support staff positions are added as discussed above.

It is anticipated that the additional workload generated by the increase in drug cases and litigation associated with the passage of this legislation will require an additional five prosecutors and four associated support staff in the first year of passage, with the potential need for additional prosecutors and associated support staff in subsequent years. Additionally, the recriminalization of all cases of driving with license canceled suspended or revoked will require the Criminal Division to prosecute additional cases. Between 2014 and 2016 the offense of driving with a license that has been canceled suspended or revoked consisted of 17% of the division's misdemeanor caseload. The vast majority of those cases were handled out of the Palmer, Kenai, and Fairbanks district attorney's offices. The increase in work load will require an additional three law office assistants and one prosecutor.

This legislation will have a fiscal impact on the Department of Law. As outlined above, the department anticipates the need for a total addition of six prosecutors and seven support staff should this bill become law.

Pre-trial

The bill also returns the bail statutes to where they were in 2015. This includes eliminating the presumptions of release and the requirement that a clear and convincing evidentiary standard be met before a person can be held on monetary bail. It also eliminates the requirement that judges use a risk assessment conducted by the Department of Corrections when making release decisions. Instead, the bill allows a risk assessment to be considered as a factor along with all other information when determining bail and conditions of release.

The department anticipates no fiscal impact from these sections of the legislation at this time.

Probation and Parole

The legislation also repeals the caps for technical violations of probation and the court will have the discretion to impose up to the remainder of the suspended sentence when a person violates. A similar provision will be reenacted for parole. The bill also eliminates the statutory timelines for a probation officer to recommend early termination of probation to the court. This returns discretion to the probation officer to make recommendations based on the probationer's performance on probation. The statutory timelines in the parole context are also repealed.

Parole eligibility is also returned to where it was before July 2016. This means non-sex class A felonies, B felonies where the person has one or more prior felony conviction, C felonies with two or more prior felony convictions, and B and C sex felonies will not be eligible for discretionary parole under most circumstances. The factors that the parole board is to consider when determining whether to release the person are also returned to where they were before July 2016.

The bill eliminates the "clear and convincing" standard which must be found before denying discretionary parole.

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Additionally, the bill will modify the earned compliance credit program to grant credit against a person's term of probation or parole upfront. The reduction to a person's period of probation or parole will be at 1/3 *instead of* 30 days for every 30 days the person goes without a violation. If a person violates, they will have time added back on to their period of probation or parole.

It is anticipated that the Department of Law will see an increase in litigation similar to what it saw with the original passage of criminal justice reform. However, the department does not anticipate a fiscal impact from these sections of the legislation.

Reporting

The Criminal Division of the Department of Law has a case management system capable of collecting a significant amount of data, including: type of offenses referred, accepted, and ultimate conviction; the location of offenses; codes reflecting reasons for decisions made through the case. However, accurate collecting and reporting on data of the nature described in the bill requires programing, training, and file review. Creating reports about specific data requires additional programming of the case management system that does not currently exist. Accurate reports also require on-going training related to the specific data entry to be collected.

Decisions about the type of charge to accept and the ultimate resolution of charges can be influenced by many factors:

- witness issues related to availability or credibility;
- evidentiary issues related to the mens rea, to competency of the defendant, to age of victim or defendant, to value of property, to other essential element of the crime;
- evidentiary issues related to identification or corroboration, to the collection of evidence, to the availability of defenses;
- discretionary reasons about related civil matters, about resolution of multiple criminal charges or multiple criminal cases, about available resources, about diversion programs, about related probation or parole violations, cooperation with authorities;
- miscellaneous reasons such as appropriate venue or jurisdiction, pre-charging delays, and speedy trial issues.

In many cases, decisions are influenced by more than just one factor. Capturing this sort of data is complicated. Not only is training needed on an ongoing basis for both current and new employees, but regular file review is also needed for quality assurance.

The addition of one Research Analyst III, a new job class to the department, will be necessary in order to comply with the new requirements present in this legislation.